

**ZELLE
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MASON &
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A LIMITED LIABILITY
PARTNERSHIP

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- Thomas H. Cook, Jr.
- Mark J. Feinberg
- H. Jerome Gette
- Wm. Gerald McElroy, Jr.
- Terrence C. McRea
- Daniel J. Millea
- G. Brian Odom
- M. Anthony Parsons II
- Troy J. Seibert
- Brett A. Wallingford
- Lawrence Zelle

Insurance Subrogation

Zelle Hofmann attorneys have successfully handled some of the largest and most complex commercial property insurance subrogation matters in the history of the industry. Our founding partners were among the pioneers of insurance subrogation in the 1970's. In the last six years, we have recovered in excess of a quarter of a billion dollars on behalf of our insurance company clients and their insureds. Through our national presence and strong local counsel network, we have successfully pursued subrogation claims throughout the United States. Zelle Hofmann currently serves as subrogation counsel for major property insurers including Factory Mutual Insurance Company, HSB Industrial Risk Insurers, Liberty Mutual, Reliance National and others.

Some notable subrogation recoveries achieved by Zelle Hofmann:

- Chemical Plant Explosion
(\$164,500,000--100%+ recovery)
- Electric Company Stack Collapse
(\$37,000,000)
- Fire Damage in Juarez, Mexico
(\$10,475,000)
- Automobile Property Damage
(\$6,725,000)
- Warehouse Fire in Mexico City
(\$5,000,000)
- Dam Collapse
(\$2,760,000)
- Manufacturing Facility Fire
(\$2,000,000)
- Building Collapse
(\$1,993,000)
- Electrical Fire
(\$1,675,000)

These results are provided for informational purposes only and are not intended to be a predictor of future success or results in any other matter.

Representative Matters

9/11 Insurance Subrogation - multi-billion dollar claim against the airlines and airport

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Insurance Subrogation

security companies

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Intellectual Property Litigation

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- G. Brian Odom
- John C. Steele
- Richard G. Urquhart
- Brett A. Wallingford

Zelle Hofmann attorneys have represented clients in numerous trademark, trade dress, trade secret, copyright and false advertising cases over the years, both throughout the U.S. and abroad. In addition to the representation of clients in many trademark and trade dress infringement and dilution actions, Zelle Hofmann attorneys have analyzed and advised clients on potential litigation under the Trademark Cyberpiracy Prevention Act, on such developing areas as trademark rights in product configurations, and on proving dilution under the Federal Trademark Dilution Act. Because of this experience, Zelle Hofmann attorneys are well-suited to efficiently pursue the discovery needed for each case, to marshal needed evidence, including favorable survey evidence, and to position the case for adjudication of a preliminary injunction motion, a summary judgment motion or trial.

View case summaries of trademark, trade dress, trade secret and false advertising matters.

Patent Infringement

Zelle Hofmann's patent infringement litigation practice forms an integral part of the firm's commitment to meeting the expanding needs of its clients. Zelle Hofmann is aggressive in helping patent holders enforce their rights against infringers of all magnitudes. Our lawyers are also committed to defending our clients that are wrongfully accused of infringement or that become embroiled in declaratory judgment proceedings. Our lawyers accommodate the needs of both our individual and corporate clients by structuring a litigation plan and strategy conducive to the scope of the infringement and resources available.

Zelle Hofmann attorneys have served as lead trial counsel on patent matters of all sizes. Our attorneys also co-venture with patent licensing counsel and/or patent prosecution counsel to identify and implement a long-term patent licensing strategy.

Our attorneys realize litigation is not always the answer and strive to promote alternative solutions to complex patent infringement questions. In that vein, we provide advice regarding the best solutions to patent infringement issues, oftentimes reaching an amicable solution before beginning the litigation process. An action plan to handle patent infringement activities before the infringement occurs allows our attorneys to move quickly and decisively at the first sign of infringement.

Zelle Hofmann attorneys have represented parties in a number of patent infringement cases. Zelle Hofmann's patent litigation experience ranges from high tech - internet and electronics technology - to patents covering exercise steps, structural hardware and road

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bumps. Our patent infringement attorneys include engineers who have hands-on experience in a variety of technical fields including onshore and offshore oil and gas production and processing, petrochemical manufacturing, software development and engineering, and computer networking systems.

Trademark, Trade Dress, and Trade Secret Litigation

Zelle Hofmann attorneys have represented clients in numerous trademark, trade dress, trade secret, copyright and false advertising cases over the years, both throughout the U.S. and abroad. In addition to the representation of clients in many trademark and trade dress infringement and dilution actions, Zelle Hofmann attorneys have analyzed and advised clients on potential litigation under the Trademark Cyberpiracy Prevention Act, on such developing areas as trademark rights in product configurations, and on proving dilution under the Federal Trademark Dilution Act. Because of this experience, Zelle Hofmann attorneys are well-suited to efficiently pursue the discovery needed for each case, to marshal needed evidence, including favorable survey evidence, and to position the case for adjudication of a preliminary injunction motion, a summary judgment motion or trial.

Licensing Cases

Zelle Hofmann attorneys also litigate matters involving various aspects of licensing and related agreements. As an example, Zelle Hofmann attorneys represented a Silicon Valley company alleging breach of a licensing agreement and seeking an accounting. This case involved the plaintiff's customized software product used in connection with climate control sensors and devices.

Representative Matters

Kellogg Co. v. Exxon Mobil Corp (trademark infringement and dilution)

Kendall-Jackson Winery (trademark and trade dress proceedings)

NBA Properties v. ABA, Inc. (trademark infringement)

Examples of Trademark Infringement, Trademark Dilution, Trade Dress And Trade Secret Cases

Kellogg Company v. Exxon Corp. (W.D.Tenn. and 6th Cir.). Zelle Hofmann attorneys represented Kellogg in this trademark infringement and dilution action against Exxon Mobil Corporation. The case involved Kellogg's famous anthropomorphic cartoon tiger, TONY THE TIGER, and the cartoon tiger used by Exxon in the 1960s to promote its motor fuels. In the lawsuit, Kellogg alleged that Exxon abandoned its Cartoon Tiger in the 1980s, reintroduced it in the 1990s in a modified form, and began to use it to directly promote food products, beverage products and convenience store services at its service stations. Kellogg claimed that this recent expansion of use of the Exxon cartoon tiger into the food, beverage and convenience store services areas infringed and diluted Kellogg's TONY THE TIGER mark. In August of 1998, the federal district court in Memphis granted summary judgment in Exxon's favor.

On April 6, 2000, however, the Sixth Circuit Court of Appeals, reversed and remanded the case for trial on Kellogg's trademark infringement claims. *Kellogg Co. v. Exxon Corp.*, 209 F.3d 562 (6th Cir. 2000). In June 2001, the district court additionally upheld Kellogg's claim for dilution by blurring under the Federal Trademark Dilution Act ("FTDA"), concluding that Kellogg had shown proof of "actual dilution" by blurring sufficient to defeat Exxon's motion for summary judgment. *Kellogg Co. v. Exxon Mobil Corp.*, 192 F.Supp.2d 790 (W.D.Tenn. 2001). Key issues raised by the litigation and appeal included laches, acquiescence, abandonment, progressive encroachment and myriad issues under the FTDA.

NBA Properties, Inc. v. ABA, Inc. et al. (E.D.N.Y.). Zelle Hofmann attorneys represented the original founders of the American Basketball Association in a trademark infringement action brought by NBA Properties, Inc. ("NBAP"). This case involved ABA, Inc.'s efforts to launch a new basketball league called "ABA2000," and allegations by NBAP that use of the "ABA" mark infringed NBAP's alleged rights in that mark. Zelle Hofmann attorneys had represented the ABA in the 1970s in antitrust proceedings against NBA. Trademark issues presented by this litigation included, among others, the validity of NBAP's trademark registrations, whether NBAP's alleged use of the ABA marks has been "sham" or mere "token" use designed to reserve rights in the mark, and the scope of protection provided by certain trademark registrations.

Gardetto's Bakery, Inc. v. Kellogg Company (D. Minn.). Zelle Hofmann attorneys represented Kellogg in this action alleging trademark infringement and trademark dilution under the Lanham Act and state unfair competition laws. In this case, the plaintiff claimed that Kellogg's use of the term "SNACK'UMS™" for a cereal-based snack food product infringed and diluted the plaintiff's federally registered "SNAK-ENS®" mark, which the plaintiff used on its snack mix products. The plaintiff

filed its complaint in late-October 1999, filed a motion for a preliminary injunction in November 1999, and sought to enjoin Kellogg's nationwide product launch scheduled for January 2000. Zelle Hofmann attorneys expeditiously assembled and submitted to the court extensive evidence, including survey evidence, supporting Kellogg's opposition to the motion for a preliminary injunction. Oral argument on the motion was held in mid-December 1999, and the court denied the plaintiff's motion from the bench.

Trademark and trade dress infringement, unfair competition action (N.D. Cal. and 9th Cir.). Zelle Hofmann attorneys represented the plaintiff Kendall-Jackson Winery, Ltd. in this case, which involved, among others, claims for trademark and trade dress infringement under the Lanham Act, and state common law claims. This case, which was tried to a jury and involved an appeal to the Ninth Circuit Court of Appeals, pertained to the labeling and packaging of bottled wine products.

Trade secret misappropriation action (Mich. Cir. Ct., Calhoun Cty. and W.D.Mich.). Zelle Hofmann attorneys represented the plaintiff in this case, which brought claims for breach of contract and misappropriation of trade secret information. This action was initially filed in Michigan state court and pertained to the product formulations and manufacturing processes for food products. During discovery, Zelle Hofmann attorneys uncovered evidence of other unlawful conduct on the part of the defendant which enabled the plaintiff to amend its complaint to assert additional claims for unfair competition under the Michigan Consumer Protection Act and the Lanham Act. Shortly after the plaintiff amended its complaint, the matter was removed to federal court and settled favorably.

Trade secret misappropriation action (M.D.Pa.). Zelle Hofmann attorneys represented the plaintiff in this action which brought claims for breach of contract, misappropriation of trade secret information and conversion. The action pertained to the design and engineering of a mechanical device used in the manufacture of food products, as well as the processes associated with the use of that device. Zelle Hofmann attorneys obtained a stipulated final judgment and consent decree, which enjoined the defendant from further use or disclosure of the plaintiff's trade secret information.

International trademark infringement action (Intermediate People's Court of Meizhou City; on appeal, High People's Court of Guangdong Province, People's Republic of China). This action involved infringement of the trademarks and trade dress of KELLOGG'S® CORN FLAKES ready-to-eat cereal in the People's Republic of China ("P.R.C."). Kellogg brought this action against the Meizhou Kongalu Nutritious Food Company in the Intermediate People's Court of Meizhou City, located in the Guangdong Province of the P.R.C. Kellogg alleged claims for violation of P.R.C. Trademark Law, P.R.C. Unfair Competition Law and various international treaties and agreements, including the Paris Convention. Kellogg initially was successful in obtaining a temporary order enjoining Kongalu's sale of the product. The Meizhou Intermediate Court,

however, later ruled against Kellogg. Kellogg appealed to the High People's Court of Guangdong Province.

Zelle Hofmann attorneys, who had no involvement in the lower court proceeding, were extensively involved in the appeal of this matter. Zelle Hofmann attorneys first assisted Kellogg in the search for and retention of new Chinese local counsel; they then worked closely with that counsel in the appellate proceeding. Zelle Hofmann prepared extensive briefs, affidavits and other materials on a number of legal and evidentiary issues. Zelle Hofmann supervised the translation of these materials into Chinese, as well as their review and finalization by local counsel. Kellogg obtained a reversal of the lower court's order and a judgment in its favor.

Trade dress infringement and unfair competition claims preliminary injunction hearing (D. Utah). In this case, Zelle Hofmann attorneys represented the defendant against trade dress infringement and other claims. The plaintiff alleged infringement of a trade dress or product configuration for various plastic food molds under the Lanham Act and related state common law claims. The plaintiff unsuccessfully sought a preliminary injunction against the defendant which would have required a nationwide recall and/or re-labeling of millions of packages of defendant's product. Thereafter, Zelle Hofmann attorneys obtained summary judgment on all of the plaintiff's state common law claims and the case settled.

Trademark infringement action preliminary injunction hearing (S.D. Ohio). Zelle Hofmann attorneys represented the defendant in this case, and successfully defeated a motion for preliminary injunction after a two-day hearing. This case involved a broad range of trademark and other issues, including the related goods doctrine, dilution, confusion of sponsorship and the necessary showing for irreparable injury. This matter settled before trial. Published opinion: *Worthington Foods, Inc. v. Kellogg Company*, 732 F.Supp. 1417 (S.D.Ohio 1990).

Trade secret misappropriation and trade disparagement action (Circuit Court, Cook County, Ill., N.D. Ill., C.D. Cal.). Zelle Hofmann attorneys represented one of the top financial printers in a number of matters involving its competitors. The disputes concerned allegations of stealing trade secrets and employees, as well as trade disparagement and other violations.

Trade secret misappropriation action (N.D. Cal.). Zelle Hofmann attorneys have represented companies in the semiconductor industry, and in the advertising industry, in cases involving the alleged theft of trade secrets by competitors.

Examples of False Advertising Matters and Regulatory Matters

Unfair advertising action (W.D.Mich.). In this case, Zelle Hofmann attorneys represented a defendant in a Lanham Act case involving claims for misleading advertising on product comparisons. Extensive briefing was required in preparation for a court-mandated alternative dispute resolution session. The action settled before trial.

State regulation of advertising (S.D. Iowa). Zelle Hofmann attorneys represented a national advertiser in this action against various state attorneys general in federal court. The action alleged that the A.G.s' threatened or actual enforcement actions against the plaintiff were preempted by federal law, unduly burdened interstate commerce, improperly restricted free speech, constituted discriminatory enforcement and/or violated the interstate compact clause. This case was favorably settled.

State regulation of food labeling claims (N.D.Tex. and 5th Cir.). Zelle Hofmann attorneys represented a company seeking to enjoin preliminary enforcement of the Texas Food, Drug and Cosmetic Act as it applied to commercial speech contained on labels of, and in advertising for, certain food products. While the trial court denied a preliminary injunction, the company's position was later vindicated by the United States Supreme Court in opinions such as *Rubin v. Coors Brewing Co.*, 115 S.Ct. 1585 (1995) and *44 Liquormart, Inc. v. Rhode Island*, 116 S.Ct. 1495 (1996).

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Labor and Employment Litigation

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- Thomas M. Darden
- Rolf E. Gilbertson
- Daniel S. Mason
- Timothy W. Regan
- John C. Steele

Zelle Hofmann attorneys represent employers and employees in a variety of disputes arising in the labor and employment context. The firm's labor and employment practice occurs in federal court and before numerous state and local courts and administrative agencies. The types of cases Zelle Hofmann attorneys have litigated or currently are litigating include wrongful termination, age, sexual, racial and disability discrimination and harassment, violation of both federal and state labor and employment statutes, trade secret protection and unfair competition, and matters involving employee benefit funds.

View case summaries of labor and employment matters.

Examples of Labor and Employment Cases

Wrongful Termination and Disability Discrimination (C.D. Cal.). Zelle Hofmann attorneys represent the defendants in a case involving claims for wrongful termination in violation of the Americans with Disabilities Act, Fair Employment and Housing Act, Family and Medical Leave Act and California Family Rights Act. Zelle Hofmann attorneys filed a motion for summary judgment on behalf of its clients, which was recently granted. The court determined that there was no evidence to support claims for wrongful termination, constructive termination and retaliation, and applied the one year statute of limitations to the claims for sexual harassment.

Sexual harassment, gender discrimination, retaliation, and constructive discharge (Superior Court, Central District, Los Angeles). This case involves serious claims of sexual harassment, in particular, hostile work environment, quid pro quo harassment, sexual assault and battery, in addition to claims for gender discrimination, retaliation and constructive discharge. The claim alleges violation of California's Fair Employment and Housing Act. Zelle Hofmann attorneys filed a motion for summary judgment on the issue of whether or not the plaintiff had properly pled a claim for relief under the ADA. The motion was granted and all claims regarding the ADA were dismissed. There remains only a claim for sexual discrimination.

Gender discrimination and retaliatory discharge (E.D. Mich.). In this case, Zelle Hofmann attorneys represented a corporate defendant against claims by an employee for sexual discrimination and retaliatory discharge. Zelle Hofmann attorneys defended both a private action brought by the plaintiff, as well as a separate action brought by the EEOC. This matter was settled favorably to our client.

Breach of employment contract and wrongful termination in violation of public policy (Cal. Super. Ct., Contra Costa Cty.). Zelle Hofmann attorneys represented a corporate defendant in this case, wherein the plaintiff alleged breach of his employment contract and wrongful termination in violation of public policy. On behalf of their client, Zelle Hofmann attorneys obtained summary judgment on the plaintiff's employment contract claim, and summary adjudication on multiple wrongful termination issues.

Age discrimination litigation (Ariz. Super. Ct., Maricopa Cty. and D. Ariz.). In these related state and federal cases, Zelle Hofmann attorneys represented employees asserting claims of age discrimination in employment, which arose out of reductions in force conducted by the defendant.